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IN THE

Supreme Court of the United States

October Term, 1973
No. 73-1052

LAWRENCE BUCKLEY,

Petitioner,

vs.

STATE OF CALIFORNIA,

Respondent.

Response to Petition for Writ of Certiorari to the Supreme Court of the State of California.

Respondent, Superior Court in and for the County of Orange, State of California, respectfully prays that this Honorable Court deny the Petition for a Writ of Certiorari to review the judgment of the Supreme Court of the State of California.

Opinions Below.

Respondent states that Petitioner's Brief contains a fair and correct statement of the pertinent opinions below.

Jurisdiction.

This Respondent states and admits that the California Supreme Court decision, referred to in the section entitled "Opinions Below," is final and complete. This Respondent does state and contend that the present case does not fall within the jurisdiction of the United States Supreme Court. Respondent further states that

the Petitioner has failed to sustain his burden of proof to show jurisdiction in the United States Supreme Court. Under the provisions of 28 United States Code Section 1257(3) and Rule 19(a) of the United States Supreme Court the Petition for a Writ of Certiorari should be denied. This case does not involve the constitutionality of any statute, state or federal, there are no federal questions involved, the decision of the California Supreme Court is not *contra* to any decision of the United States Supreme Court, and the decision was based upon an adequate and independent state grounds.

Questions Presented.

1. Whether this is a proper case for the United States Supreme Court to invoke its jurisdiction by issuing the Writ of Certiorari?

2. Whether the Supreme Court of California was correct in upholding the jurisdiction of the trial court to issue the order adjudicating the Petitioner in contempt?

3. Was the State Supreme Court correct in holding that the order of the trial court was sufficient to uphold the adjudication of contempt?

4. Whether the State Supreme Court was correct in holding that the trial judge had jurisdiction to adjudicate and to order the punishment for the contemptuous conduct?

5. Whether the State Supreme Court was correct in holding that Petitioner had not been convicted under any penal statute, but had been adjudged in direct contempt under the California Code of Civil Procedure, and that there is adequate and complete scope of review provided under California law?

Statutes Involved.

The applicable statutory provisions cited herein are set forth in Appendix A, *infra*, pages 21-26. Title 28, United States Code Section 1257, California Code of Civil Procedure Sections 1209, 1211, 1218 and 1222, and Rule 19, subparagraph 1(a), United States Supreme Court Rules.

Statement of the Case.

The opinion below is set forth in Appendix A of Petitioner's Brief. The Statement of the Case considered by the California Supreme Court in *In re Buckley* (1973), 10 Cal. 3d 237, 241-245, is the Statement of the Case which this Respondent considers appropriate and which this Respondent adopts as Respondent's Statement of the Case.

ARGUMENT.

The Judgments Below Do Not Involve Any Federal or Constitutional Question, nor Are There Special and Important Reasons Requiring Review by the United States Supreme Court.

Rule 19, United States Supreme Court Rules, notes that the Writ of Certiorari is not a matter of right, but of sound judicial discretion and states that the Writ will be granted "only where there are special and important reasons therefor." As an indication of the character of these reasons, the rule states that the Writ should be granted where a state court has decided a federal question of substance "not theretofore determined by this court." There certainly is nothing in this decision of the California Supreme Court wherein a federal question of substance had been decided. 28 United States Code Section 1257 contemplates some question of "title, right, privilege, or immunity, under the Federal Constitution." The decision of the California Court did not involve any such question.

> "This Court is always wary of assuming jurisdiction of a case from a state court unless it is plain that a federal question is necessarily presented, and the parties seeking review here must show that we have jurisdiction of the case."
>
> *Mental Hygiene Department of California v. Kirchner* (Cal. 1965), 380 U.S. 194, 13 L. Ed. 2d 753, 756, 85 S.Ct. 871.

An appellant has the burden of affirmatively establishing the United States Supreme Court's jurisdiction.

> *Republic Natural Gas Company v. State of Oklahoma* (1948), 334 U.S. 62, 92 L.Ed. 1212, 68 S.Ct. 972, 978.

Petitioner, both in his statement of jurisdiction and his argument presented in his Petition, has failed to state any basis for the United States Supreme Court's jurisdiction in this case. The State Supreme Court did not consider that a federal question was raised and no reference to a federal question is made in the decision of that State Court.

> ". . . [T]his court has stated that when, . . ., the highest state court has failed to pass on a federal question, it will be assumed that the omission was due to want of proper presentation in the state courts, unless the aggrieved party in this court can affirmatively show the contrary."
>
> *Street v. New York* (1969), 394 U.S. 576, 22 L.Ed. 2d 572, 579, 89 S.Ct. 1354.

The Petitioner before the California Supreme Court had attempted to raise an issue of equal protection of the laws concerning a stay or an appeal as a matter of right upon the adjudication of contempt. The California Supreme Court saw that for what it was, a straw man of no substance, and pointed out to Petitioner that he had not been convicted under any penal statute but he had been held in direct contempt under Code of Civil Procedure statute, and that Petitioner had a fair, complete and adequate review under the laws of the State of California.

The mere averment of a federal question or some claim of constitutional right is not sufficient to invoke the jurisdiction of the United States Supreme Court.

> *Sawyer v. Piper* (1903), 189 U.S. 154, 157, 47 L.Ed. 757, 23 S.Ct. 633, 634.

The mere averment of a federal question without color of ground or which rests on a false assumption is

insufficient to invoke the jurisdiction of the United States Supreme Court.

Parker v. McLain (1915), 237 U.S. 469, 474, 59 L.Ed. 1051, 35 S.Ct. 632, 634.

In considering a statement of jurisdiction, the Court has stated:

"But we have often held that mere assertion of a claim in respect to some constitutional right is not sufficient: there must be a real and substantial controversy of the required character which deserves serious consideration."

United States Fidelity and Guaranty Company v. State of Oklahoma (1919), 250 U.S. 111, 112, 63 L.Ed. 876, 39 S.Ct. 399, 400.

The United States Supreme Court does not review decisions which rest on adequate state grounds.

Young v. Ragen (1949), 337 U.S. 235, 93 L. Ed. 1333, 69 S.Ct. 1073, 1074.

Judgments of state courts which rest upon adequate and independent state grounds or nonfederal grounds are not reviewed by the Supreme Court.

Herb v. Pitcairn (1944), 324 U.S. 117, 125, 89 L.Ed. 789, 65 S.Ct. 429, 463.

"It is a familiar principle that this Court will decline to review state court judgments which rest upon independent and adequate state grounds not withstanding the co-presence of federal grounds."

This is so whether the grounds are substantive or procedural.

Fay v. Noia (1963), 372 U.S. 391, 428, 9 L.Ed. 837, 863, 83 S.Ct. 822.

A real and substantial federal question is essential to the jurisdiction of the United States Supreme Court over judgments of state courts.

Abrams v. VanSchaick (1934), 293 U.S. 188, 189, 79 L.Ed. 278, 55 S.Ct. 135, 136.

When the decision of the state court is upon a non-federal ground or a point of local or general law sufficient to support the judgment, review by the Supreme Court is precluded.

Henry v. Mississippi (1965), 379 U.S. 443, 446, 13 L.Ed. 2d 408, 412, 85 S.Ct. 564.

A Writ of Certiorari will not ordinarily be granted to review decisions or judgments based solely on questions of fact.

National Labor Relations Board v. Waterman Steamship Corporation (1940), 309 U.S. 206, 209, 84 L.Ed. 704, 60 S.Ct. 493, 496.

Unless the case involves a federal question, the judgment or decree therein is not reviewable in the United States Supreme Court.

Hunter Company v. McHugh (1943), 320 U.S. 222, 227, 88 L.Ed. 3, 64 S.Ct. 19, 21.

Where the issues are not unsettled or are not important and do not effect any federal question, review by the Supreme Court should be denied.

J. I. Case Company v. National Labor Relations Board (1944), 321 U.S. 332, 334, 88 L.Ed. 762, 64 S.Ct. 576, 579.

The order reflecting the summary adjudication of contempt of Petitioner is correctly set forth in Petitioner's Appendix B. The California Supreme Court

found that this was a proper order, a proper adjudication of contempt under California Code of Civil Procedure Section 1211.

In re Buckley (1973), 10 Cal. 3d 237, 258.

Petitioner had attacked that order with the contention that it was insufficient on its face to support the jurisdiction of the trial court and was not supported by the record. Under that section of the opinion designated "I", the California Court determined that there was substantial evidence to sustain the jurisdiction of the trial court and that there was sufficient evidence before the trial court to sustain the judgment and order. This was essentially a factual determination, and the determination was based solely on the facts as contained in the record from the trial court and on the basis of California law and procedure. Before the California Supreme Court, Petitioner had contended that the case of *In re Little* (1972), 404 U.S. 553, 30 L.Ed. 2d 708, 92 S.Ct. 659, was authority for his contention that the evidence contained in the record from the trial court was factually insufficient to sustain the adjudication of contempt. Consideration of the brief description of facts contained in the *Little, supra,* decision was as near as the California Supreme Court came to considering a so-called federal question. The California Court found that the facts in *Little, supra,* were distinguishable from those facts in the case of Petitioner. Further, the California Court found that the opinion in *Little supra,* "does not derogate from the settled California rule." 10 Cal. 3d 237, 255.

This Respondent contends that no federal issue was raised concerning the sufficiency of the adjudication of contempt and that such adjudication and the review

thereof by the California Supreme Court consisted of a factual determination and a consideration of California statute law and California appellate decisions.

Petitioner's second contention before the California Supreme Court was that "under the circumstances of the case, the trial judge is required, as a matter of due process, to refer the charge of the alleged contempt to another judge for adjudication." The California Supreme Court considered this contention and the same is reflected in the opinion under II, 10 Cal. 3d 237, 255-258. Petitioner relied upon, and the California Supreme Court considered, the facts reflected in the decision in *Mayberry v. Pennsylvania* (1971), 400 U.S. 455, 27 L.Ed. 2d 532, 91 S.Ct. 499. The California Court determined that the factual situation presented in Petitioner's case was much different than that reflected in the decision in *Mayberry, supra.* It was the factual situation in *Mayberry, supra,* that made the decision noteworthy. Those words were characterized as being scandalous, "fighting words" of the Defendant. There was also the failure of the trial judge to take immediate action and then there was the belated over-reaction by the trial judge in his sentencing of Mayberry for the alleged contempts. Petitioner misinterprets *Mayberry* in the same way as the Petitioner in *Weiss v. Burr* (1971), 327 Fed. Supp. 1306, 1309, did. It is this Respondent's contention that the real informity shown in *Mayberry, supra,* is the trial judge's reaction and subsequent sentencing of Mayberry to confinement for a long term of years as the result of the alleged contempts.

The only federal question, and this Respondent does not believe a federal question was raised, which could have been raised concerning this portion of Petitioner's Appeal to the California Supreme Court is the citation

of several cases decided by the United States Supreme Court. From a reading of the opinion, it was the factual situation in each of the cited cases which entered into the California Supreme Court's decision. Again, the decision was based upon an interpretation of the facts and upon adequate and independent state grounds with an absence of federal questions.

Petitioner's third contention before the California Court was the alleged denial of equal protection of the laws because California statutes do not provide for an appeal from, or a stay of, an order adjudicating a person in contempt of court. The California Supreme Court referred to California Code of Civil Procedure Sections 1211 and 1222. Both statutes are procedural in nature. The Court pointed out Petitioner's false assumption that he had been convicted of a misdemeanor under the California Penal Code. The Court pointed out, 10 Cal. 3d 237, 259, that the Court had earlier outlined in their opinion the scope of the review and stated, in effect, by the citation, the more than adequate extent of review for Petitioner.

There is nothing contained within the decision of the California Supreme Court which may be equated to "special and important reasons" demanding review by the United States Supreme Court. The import of the California decision is that under the facts submitted to the California Supreme Court and the content of the order of the trial court adjudicating Petitioner in contempt the California Supreme Court found that the trial court had jurisdiction to issue the order and that there was sufficient evidence to sustain the jurisdiction of the trial court. The California Court did reaffirm the inherent power of a court to punish by contempt an act which impugns the integrity of that

court and found that that power exists independent of statute. This was a reaffirmance of a well-known and long accepted rule of California law.

It should be noted that the dissent, 10 Cal. 3d 237, 259-264, did not consider that any question of constitutional law or federal law was present in the case. In fact, the two dissenting justices did not consider that the Petitioner's second and third contentions presented to the California Court raised any issue worthy of note.

II

The Supreme Court of the State of California Was Correct in Upholding the Jurisdiction of the Trial Court to Issue the Order Adjudicating the Petitioner in Contempt.

III

The State Supreme Court Was Correct in Holding That the Order of the Trial Court Was Sufficient to Uphold the Adjudication of Contempt.

Appendix B to Petitioner's Brief is the trial court's order adjudicating the Petitioner in contempt. This Respondent adopts Appendix B to Petitioner's Brief and states that it is a true and correct copy of the order issued by the trial court. The California Court held that this summary adjudication of contempt was proper under California Code of Civil Procedure Section 1211. 10 Cal. 3d 237, 259. California Code of Civil Procedure Section 1211 is procedural in nature and states the requirement of the form, content and necessity for such a written order.

California Code of Civil Procedure Section 1209 is an act of the State Legislature enumerating certain

"acts or omissions" which are considered contempts of the authority of a court. This latter statute lists eleven such acts or omissions but nowhere within the four corners of the statute does it state a legislative intent to make these enumerated acts exclusive and that no other acts are considered to be a direct contempt. Nothing within the statute indicates any intent or attempt of the Legislature to limit the powers of a California Court in adjudging direct contempts. The trial court's order, Appendix B to Petitioner's Brief, may have used certain language found within Code of Civil Procedure Section 1209, but the order does not purport to base its authority on Code of Civil Procedure Section 1209. The California Court determined that the list contained in said statute was not exclusive, 10 Cal.3d 237, 248, footnote 14, and the Court reaffirmed the power of a court to punish by contempt an act which impugns the court's integrity and held that this power existed independent of statute.

For the history and a general statement on the powers of state courts deriving their powers from the State Constitution is found in 17 American Jurisprudence, Contempt, Sections 62 and 63, 17 Corpus Juris Secundum, Contempt, Section 43, and 12 California Jurisprudence 2d, Contempt, Section 3. These cited authorities stand for the proposition that constitutional courts have inherent powers to punish as direct contempt acts committed within the presence of the court and which acts are offensive to the integrity of the court.

This Petitioner was adjudged in contempt in a Superior Court of the State of California. Superior Courts of the State of California are constitutional courts and

are provided for by California Constitution, Article VI, Section 1.

Burns v. Superior Court (1903), 140 Cal. 1, 4;

Raskin v. Superior Court (1934), 138 Cal. App. 668, 669-670;

Fairfield v. Superior Court (1966), 246 Cal. App. 113, 120;

In re McKinney (1968), 70 Cal. 2d 8, 10;

People v. Turner (1850), 1 Cal. 152, 153-154;

Raiden v. Superior Court (1949), 34 Cal. 2d 83, 86;

People v. Clemmons (1962), 208 Cal. App. 2d 696, 700;

In re Shortridge (1893), 99 Cal. 526, 533;

In re San Francisco Chronicle (1934), 1 Cal. 2d 630, 634;

In re Morris (1924), 194 Cal. 65, 68;

Ex parte Creely (1908), 8 Cal. App. 713, 718-719;

Drew v. Superior Court (1919), 43 Cal. App. 651, 654;

Blodgett v. Superior Court (1930), 210 Cal. 1, 14-15; and

Lamberson v. Superior Court (1907), 151 Cal. 458, 461.

The case of *Bridges v. State of California* (1941), 314 U.S. 252, 266, 86 L.Ed. 192, 62 S.Ct. 190, 195, recognized the inherent powers of both state and federal courts to protect themselves from disturbances and

disorders in the courtroom by use of contempt proceedings.

In *Shillitani v. United States* (1966), 384 U.S. 364, 370, 16 L.Ed. 2d 622, 627, 86 S.Ct. 1331, there is found the following statement:

> "There can be no question that courts have inherent power to enforce compliance with their lawful orders through civil defense."

A court created by the Constitution of the State of California had the power to adjudge the Petitioner in contempt based on the acts and omissions committed within the sight and presence of the trial court. The State Supreme Court, after reviewing the tests for appellate consideration under writs of habeas corpus, determined that the trial court did have jurisdiction and that there was substantial evidence to sustain the jurisdiction of the trial court. This is the test of California law referred to by the State Supreme Court. 10 Cal. 3d 237, 247. The written order adjudicating the contempt, Appendix B to Petitioner's Brief, was in strict compliance with Section 1211 of Code of Civil Procedure.

IV

The State Supreme Court Was Correct in Holding That the Trial Judge Had Jurisdiction to Adjudicate and to Order the Punishment for the Contemptuous Conduct.

This Respondent contends that the best argument rebutting Petitioner's claim that the trial judge should have, as a matter of due process, referred the matter of the adjudication of the alleged contempt to another judge is the case Petitioner recites, *Mayberry v. Pennsylvania* (1971), 400 U.S. 455, 27 L.Ed. 2d 532,

91 S.Ct. 499. The evidence of the personal involvement of the trial judge and the so-called "fighting words" to which the trial judge was subjected in *Mayberry, supra,* are an example of extreme vilification as compared to the attack on the trial judge by the this Petitioner. The most significant evidence of the trial judge's personal involvement in *Mayberry, supra,* is the intemperate or harsh sentences which were adjudged against Mayberry. Another distinguishing factor is that in *Mayberry* the judge waited until the end of the trial to adjudge the Defendants in contempt. Here, the trial judge at the time of the acts and omissions constituting contempt immediately announced that he was held in contempt and announced the punishment which would be adjudged. The trial court stated that the punishment would be held in abeyance until the end of the trial then being conducted before the trial court. On the following day in a discussion outside of the presence of the jury the trial judge informed the Petitioner that he would be allowed bail and a stay upon the making of bail. There is no question of severity of sentence here because the trial judge followed the provisions of Code of Civil Procedure Section 1218 and remained within the limitations of punishment as dictated by the Legislature via that statute. This Respondent believes that the unworthiness of Petitioner's contention is so evident that further argument should not be required.

V

The State Supreme Court Was Correct in Holding That Petitioner Had Not Been Convicted Under Any Penal Statute but Had Been Adjudged in Direct Contempt Under the California Code of Civil Procedure, and That There Is Adequate and Complete Scope of Review Provided Under California Law.

While the California Court found that Petitioner was correctly held in direct contempt under the powers inherent in a constitutional court for a direct contempt committed in the presence of the court, the court also held that the order adjudicating the contempt conformed with all California procedural requirements. 10 Cal. 3d 237, 259. California Code of Civil Procedure Section 1222 provides that an order made in a contempt proceeding is not appealable. The California Court pointed out that there are several ample provisions for the review of an adjudication of contempt. 10 Cal. 3d 237, 247, 259.

Review in contempt cases in California has been provided for by writs of habeas corpus, certiorari, and in some instances, prohibition. 12 California Jurisprudence 2d, Contempt, Section 78.

> "It is well settled that habeas corpus is an appropriate remedy to halt the enforcement of an invalid judgment of contempt. (Citations) Habeas corpus may also be employed to review the jurisdiction of the trial court to punish and imprison for contempt."
>
> *In re Blaze*, 271 Cal. App. 2d 210, 211.

The scope of review of a contempt case under California law is really far-ranging. The reviewing court is

required to determine jurisdiction, and in determining the question of jurisdiction the reviewing court must review the entire record of proceedings below and those proceedings are reviewed with no presumption of regularity, validity or sufficiency of the proceedings in support of the judgment of contempt as might be assumed in other actions and the review of other judgments.

In re Cirosta (1963), 219 Cal. App. 2d 777, 784-785.

As to any allegation of discrimination to this Petition, he is now and has been since September 22, 1972, free on bail and the punishment is under a stay granted by the California trial court.

Conclusion.

Based upon the authorities cited herein, the reasons advanced therefor and the arguments submitted herewith, Respondent urges this Honorable Court to deny the Petition for the Writ of Certiorari.

Respectfully submitted,

ADRIAN KUYPER,
County Counsel, and
CHARLES B. SEVIER,
Deputy,
By CHARLES B. SEVIER,
Attorneys for Respondent Superior Court in and for the County of Orange, State of California.

APPENDIX A.

Statutory Provisions.

California Code of Civil Procedure:

§ 1209:

"The following acts or omissions in respect to a court of justice, or proceedings therein, are contempts of the authority of the court:

1. Disorderly, contemptuous, or insolent behavior toward the judge while holding the court, tending to interrupt the due course of a trial or other judicial proceeding;

2. A breach of the peace, boisterous conduct, or violent disturbance, tending to interrupt the due course of a trial or other judicial proceedings;

3. Misbehavior in office, or other wilful neglect or violation of duty by an attorney, counsel, clerk, sheriff, coroner, or other person, appointed or elected to perform a judicial or ministerial service;

4. Abuse of the process or proceedings of the court, or falsely pretending to act under authority of an order or process of the court;

5. Disobedience of any lawful judgment, order, or process of the court;

6. Rescuing any person or property in the custody of an officer by virtue of an order or process of such court;

7. Unlawfully detaining a witness, or party to an action while going to, remaining at, or returning from the court where the action is on the calendar for trial;

8. Any other unlawful interference with the process or proceedings of a court;

9. Disobedience of a subpena duly served, or refusing to be sworn or answer as a witness;

10. When summoned as a juror in a court, neglecting to attend or serve as such, or improperly conversing with a party to an action, to be tried at such court, or with any other person, in relation to the merits of such action, or receiving a communication from a party or other person in respect to it, without immediately disclosing the same to the court;

11. Disobedience by an inferior tribunal, magistrate, or officer, of the lawful judgment, order, or process of a superior court, or proceeding in an action or special proceeding contrary to law, after such action or special proceeding is removed from the jurisdiction of such inferior tribunal, magistrate, or officer.

No speech or publication reflecting upon or concerning any court or any officer thereof shall be treated or punished as a contempt of such court unless made in the immediate presence of such court while in session and in such a manner as to actually interfere with its proceedings."

§ 1211:

"When a contempt is committed in the immediate view and presence of the court, or of the judge at chambers, it may be punished summarily; for which an order must be made, reciting the facts as occurring in such immediate view and presence, adjudging that the person proceeded against is thereby guilty of a contempt, and that he be punished as therein prescribed. . . ."

§ 1218:

"Upon the answer and evidence taken, the court or judge must determine whether the person proceeded against is guilty of the contempt charged, and if it be adjudged that he is guilty of the contempt, a fine may be imposed on him not exceeding five hundred dollars ($500), or he may be imprisoned not exceeding five days, or both; . . . the conviction, specifying particularly the offense, and the judgment thereon, must be entered in the docket."

§ 1222:

"The judgment and orders of the court or judge, made in cases of contempt, are final and conclusive."

United States Supreme Court Rule 19, 28 U.S.C.A.:

"A review on writ of certiorari is not a matter of right, but of sound judicial dsicretion, and will be granted only where there are special and important reasons therefor. The following, while neither controlling nor fully measuring the court's discretion, indicate the character of reasons which will be considered:

(a) Where a state court has decided a federal question of substance not theretofore determined by this court, or has decided it in a way probably not in accord with applicable decisions of this court. . . ."

28 U.S.C.A. Section 1257:

"Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:

* * * *

(3) By writ of certiorari, where the validity of a treaty or statute of the United States is drawn in question or where the validity of a State statute is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States. June 25, 1948, c. 646, 62 Stat. 929."